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7 UNITED STATES DISTRICT COURT
8 CENTRAL DISTRICT OF CALIFORNIA
9 WESTERN DIVISION
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11 ANA MARIA AGUIAR-ALCALA,) No. ED CV 14-00778-VBK
12)
13 Plaintiff,) MEMORANDUM OPINION
14) AND ORDER
15 v.)
16) (Social Security Case)
17 CAROLYN W. COLVIN, Acting)
18 Commissioner of Social)
19 Security,)
20)
21 Defendant.)
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18 This matter is before the Court for review of the decision by the
19 Commissioner of Social Security denying Plaintiff's application for
20 disability benefits. Pursuant to 28 U.S.C. §636(c), the parties have
21 consented that the case may be handled by the Magistrate Judge. The
22 action arises under 42 U.S.C. §405(g), which authorizes the Court to
23 enter judgment upon the pleadings and transcript of the Administrative
24 Record ("AR") before the Commissioner. The parties have filed the
25 Joint Stipulation ("JS"), and the Commissioner has filed the certified
26 AR.

27 Plaintiff raises the following issues:

28 1. Whether the Administrative Law Judge ("ALJ") erred in

1 rejecting the opinion of a treating psychiatrist;

2 2. Whether the finding that Plaintiff's testimony regarding her
3 subjective complaints is not credible is supported by clear
4 and convincing evidence; and

5 3. Whether the ALJ correctly determined that Plaintiff is
6 literate in English.

7 (JS at 7.)

8
9 This Memorandum Opinion will constitute the Court's findings of
10 fact and conclusions of law. After reviewing the matter, the Court
11 concludes that for the reasons set forth, the decision of the
12 Commissioner must be reversed and the matter remanded for a de novo
13 hearing.

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15 I

16 **THE ALJ ERRED IN REJECTING THE OPINION**
17 **OF TREATING PSYCHIATRIST DR. HUDSON**

18 Following a brief hearing held on December 19, 2012, at which
19 time testimony was taken from Plaintiff, who was represented by
20 counsel (not the counsel now representing her) and a Vocational Expert
21 ("VE"). Plaintiff was assisted by an interpreter. (AR 42-64.) In an
22 ensuing unfavorable Decision dated January 11, 2013 (AR 27-37), the
23 ALJ followed the familiar five step sequential evaluation process
24 outlined in 20 C.F.R. § 416.920(a). After determining that Plaintiff
25 has not engaged in substantial gainful activity since the application
26 date, the ALJ assessed the following severe impairments: obesity;
27 degenerative spur formation and slight disk space narrowing in the
28 lumbar spine; hypertension; and major depressive disorder. (AR 29.)

1 The ALJ next determined that Plaintiff does not have an impairment
2 which meets or equals any of the Listings (AR 30), and then at Step
3 Four determined that Plaintiff's residual functional capacity ("RFC")
4 permits her to perform medium work with the exception that she can
5 understand, remember and carry out simple job instructions, but would
6 be unable to perform work that would require directing others,
7 abstract thought, or planning. She can maintain attention and
8 concentration to perform simple, routine and repetitive tasks in a
9 work environment free of fast-paced production requirements. She can
10 have occasional interaction with coworkers, supervisors and the
11 general public. She can work in an environment with occasional changes
12 to the work setting and occasional work-related decision making. (AR
13 31.) Finally, at Step Five, the ALJ determined that Plaintiff is not
14 disabled and that there are alternative available jobs that she can
15 perform. (AR 36.)

16 The mental health history indicates that on September 9, 2009,
17 Plaintiff was seen by a clinical therapist at a community counseling
18 center, where she presented "in crisis, crying and saying she has had
19 suicidal ideations recently." (AR 282.) A mental status examination
20 indicated difficulties with memory, paranoid thought content with
21 auditory hallucinations; fair insight and poor judgment; a
22 depressed/anxious mood; and a tearful affect. (AR 285.)

23 Plaintiff was then referred to treating psychiatrist Dr. Hudson
24 on September 16, 2009. Dr. Hudson provided continuous psychiatric care
25 for Plaintiff, meeting with her every 9 to 12 weeks, until October
26 2012. (AR 280-281, 402.) Dr. Hudson's initial mental status exam
27 indicated that Plaintiff had depressed mood and affect, she was
28 anxious and tearful, and the diagnosis was major depressive disorder,

1 recurrent, severe, with psychotic features, and a Global Assessment of
2 Function ("GAF") score of 45. (AR 281.)

3 During an almost three-year course of treatment, Dr. Hudson
4 examined Plaintiff an additional 14 times, and often adjusted her
5 medications. In September 2012, Dr. Hudson wrote, "prior
6 antidepressants: Paxil. Prozac, Effexor, Wellbutrin - all have been
7 ineffective or with side effects." (AR 374.)

8 On August 24, 2011, Dr. Hudson completed a Medical Source
9 Statement in which she concluded that Plaintiff had "poor" ability to
10 understand and remember detailed/complex instructions; carry out
11 instructions; work without supervision; and interact with the public,
12 coworkers, and supervisors. (AR 270-271.) She indicated that her
13 prognosis was guarded. (AR 271.)

14 Dr. Hudson also filled out a "Psychiatric - Psychological
15 Impairment Questionnaire" on January 19, 2012. (AR 255-262.) Dr.
16 Hudson diagnosed major depressive disorder, recurrent, severe, with
17 psychotic features; assessed a GAF score of 45, and provided a guarded
18 prognosis. (Id.) Dr. Hudson identified "positive clinical findings"
19 which included poor memory; sleep disturbance; mood disturbance;
20 delusions or hallucinations; anhedonia or pervasive loss of interests;
21 feelings of guilt or worthlessness; difficulty thinking or
22 concentrating; social withdrawal or isolation; and decreased energy.
23 (AR 256.) Dr. Hudson further assessed that Plaintiff was "markedly"
24 limited in 16 out of 20 areas of mental functioning; has moderate
25 limitations in her ability to understand and remember one or two step
26 instructions, to carry out simple one or two step instructions, and to
27 ask simple questions or request assistance; and is "mildly" limited in
28 her ability to be aware of normal hazards and take appropriate

1 precautions. (AR 257-260.) Dr. Hudson further assessed that Plaintiff
2 was incapable of even low-stress work and would be likely to miss an
3 average of over three workdays per month. (AR 260-262.)

4 On October 24, 2012, Dr. Hudson submitted a narrative report. (AR
5 402.) She referenced and reiterated the conclusions in her January 19,
6 2012 Psychiatric Impairment Questionnaire discussed above. The
7 following portions of her narrative report are of particular
8 significance in the Court's determination of the adequacy of the ALJ's
9 rejection of her conclusions (see, infra):

10 "In examining the claimant I found evidence of sleep and
11 mood disturbance, social withdrawal, decreased energy,
12 anhedonia, feelings of guilt/worthlessness, and difficulty
13 concentrating. Her primary symptoms include crying spells,
14 insomnia, nightmares, a depressed mood, social withdrawal,
15 anhedonia, poor concentration and memory, with the latter
16 four being the most severe."

17 (AR at 402.)
18

19 Dr. Hudson's narrative report further reiterated the previously
20 noted "marked limitations" in numerous areas of mental functioning, as
21 well as "moderate limitations" in other areas. (Id.)

22 In assessing Plaintiff's mental RFC, the ALJ provided the
23 reasoning he relied upon to reject Dr. Hudson's conclusions. First, he
24 found that these limitations were too restrictive "considering the
25 claimant's admitted activities and the objective record. Recent
26 treatment records noted the claimant acknowledged she was feeling
27 better. The claimant admitted she was able to prepare simple daily
28 meals. She admitted she spoke on the telephone regularly." (AR 34.)

1 Dr. Hudson's conclusions in her three reports as to Plaintiff's
2 mental RFC were completely rejected by the ALJ, who found that they
3 had "no probative value." As a basis for this wholesale disposal of
4 Dr. Hudson's opinions, the ALJ opined, "The statements were not
5 supported by the objective medical evidence as discussed above. The
6 claimant recently admitted she felt better. She denied
7 hallucinations." (AR 34.) Finally, as a third reason to reject Dr.
8 Hudson's opinion, the ALJ engaged in a speculative discussion of the
9 "possibility" that a doctor "may express an opinion in an effort to
10 assist the patient with whom he or she sympathizes for one reason or
11 another." (*Id.*) It was the ALJ's conclusion that where a medical
12 provider's opinion "departs substantially from the rest of the
13 evidence of record, as in the current case," it is likely that the
14 medical opinion provided is, effectively, biased in favor of the
15 patient.

16 In this case, many of Dr. Hudson's diagnostic conclusions differ
17 from those of the examining consultative examiner, Dr. Ngati, along
18 with non-examining sources. Consequently, according to Ninth Circuit
19 law, while the opinion of a treating physician is entitled to the most
20 weight, that opinion can be rejected or depreciated based only upon
21 articulated "specific and legitimate" reasons supported by substantial
22 evidence in the record. *See Andrews v. Shalala*, 53 F.3d 1035, 1043
23 (9th Cir. 1995); *Lester v. Chater*, 81 F.3d 821, 830 (9th Cir. 1996).
24 Consequently, the Court's task here is to determine whether the
25 articulated reasons in fact are specific and legitimate and are
26 supported by substantial evidence in the record.

27 The first reason set forth in the Decision is that Dr. Hudson's
28 conclusions were too restrictive considering Plaintiff's admitted

1 activities of daily living ("ADL"). The ALJ relied upon Plaintiff's
2 admission that she could prepare simple daily meals, spoke on the
3 telephone regularly, and could complete short tasks, such as easy
4 chores. Examining the actual record, however, the simple daily meals
5 to which Plaintiff admitted an ability to prepare were "sandwiches and
6 frozen dinners." (AR 204.) Further, Plaintiff indicated she is only
7 able to prepare food or meals when she is able. (Id.) She articulated
8 that she cannot prepare less complicated meals because of her
9 trembling and shaking hands. (Id.)

10 With regard to Plaintiff's talking on the telephone, she admitted
11 to talking to her sisters once or twice a week. (AR 206.) Further,
12 while the ALJ focused on the report of Plaintiff's son that she could
13 do easy chores (AR 34, 215), the ALJ failed discuss the statements
14 made by Plaintiff's son that Plaintiff does no household chores (AR
15 212-213); that she is able to go shopping for groceries, with her
16 son's assistance, twice a month for about an hour (AR 213); that she
17 loses concentration and has trouble understanding anything but very
18 simple directions (Id.); that she is moody and irritable (AR 215);
19 that she has a complete lack of social activities (Id.); and that she
20 is unable to be by herself at all times (AR 216).

21 Based on the foregoing summary from the record, the Court
22 concludes that the ALJ effectively cherry picked a few ADLs of which
23 Plaintiff is capable, which led to an unsupported conclusion that
24 Plaintiff's mental state was better than assessed by Dr. Hudson.

25 The same faulty methodology appears to be case with regard to the
26 ALJ's assessment of Dr. Hudson's treatment notes and her three
27 reports, which the Court has summarized. For example, the ALJ pointed
28 out that Plaintiff recently admitted she felt better and that she

1 denied hallucinations. (AR 34.) The ALJ pointed to a statement during
2 a November 2012 examination in which Plaintiff said, in part, "I feel
3 better." As Plaintiff's counsel points out, the full statement
4 Plaintiff provided was that she felt better but, "The only thing is
5 that I feel like animals on my skin and then I see them out of the
6 corner of my eye." (AR 374.) Further, while Plaintiff largely denied
7 hallucinations, Dr. Hudson included hallucinations and delusions as
8 applicable symptoms, and in fact, Plaintiff obviously claimed
9 hallucinations in the quoted portion of the September 2012 exam cited
10 above.

11 The ALJ's assessment of Dr. Hudson's reports is faulty because it
12 fails to consider the reports as a whole, instead picking out isolated
13 and out of context portions to support an opinion. This practice is
14 unsustainable on appeal. See Holohan v. Massanari, 246 F.3d 1195, 1207
15 (9th Cir. 2001); Gallant v. Heckler, 735 F.2d 1450, 1456 (9th Cir.
16 1984); Vincent v. Heckler, 730 F.2d 1393, 1394-95 (9th Cir. 1984).

17 Further, Dr. Hudson's analytic conclusion that the medications
18 she had provided over almost an almost three-year period for
19 Plaintiff's mental health functioning, which were often changed and
20 adjusted, were ultimately ineffective, was supported by Plaintiff's
21 own self-reporting during her meetings with Dr. Hudson. (See, e.g., AR
22 264, 265, 268, 272, 273, 274, 275, 276.)

23 The ALJ also implies that Dr. Hudson's opinions were based on
24 Plaintiff's subjective reporting, but that apparent conclusion is not
25 borne out by careful review of the chronological treatment records and
26 the three analytic reports that Dr. Hudson provided. Further, Dr.
27 Hudson's statements about what she believes Plaintiff can still do
28 despite her impairments is a medical source statement not prohibited

1 by regulations. See SSR 96-5p. Certainly, the ultimate determination
2 of disability is reserved to the Commissioner, but this in no way
3 forecloses a medical source from opining as to what a claimant is
4 still able to do despite her impairments.

5 For the foregoing reasons, the Court determines that the ALJ's
6 assessment of Dr. Hudson's opinions, which resulted in what can fairly
7 be categorized as a total rejection of those opinions, is not based on
8 specific and legitimate reasons. On remand, Dr. Hudson's opinions and
9 conclusions will be evaluated according to appropriate legal
10 standards.

11 12 II

13 THE ALJ'S ASSESSMENT OF PLAINTIFF'S CREDIBILITY 14 IS NOT SUPPORTED BY CLEAR AND CONVINCING EVIDENCE

15 The ALJ depreciated Plaintiff's credibility as to her subjective
16 symptoms. The Court must determine if the articulated reasons were
17 specific, clear and convincing. See Lingenfelter v. Astrue, 504 F.3d
18 1028, 1035-36 (9th Cir. 2007).

19 The ALJ articulated as his first reason that, "First, even if the
20 claimant's daily activities are truly as limited as alleged, it is
21 difficult to attribute that degree of limitation to the claimant's
22 medical condition, as opposed to other reasons, in view of the
23 relatively benign medical evidence and other factors discussed in this
24 Decision." Here, the ALJ is apparently largely referring to Dr.
25 Hudson's treatment notes and opinions, which the Court has
26 exhaustively discussed in the context of the first issue, finding that
27 the ALJ's assessment of Dr. Hudson's notes and opinions is not
28 supported by substantial evidence and must be determined de novo on

1 remand.

2 The Court agrees, also, with Plaintiff's counsel that as to
3 Plaintiff's physical condition, primarily her back pain, the ALJ
4 improperly depreciated the objective medical evidence. For example, he
5 characterized her back problems as limited to "degenerative spur
6 formation and slight disk space narrowing in the lumbar spine," while
7 the objective records indicate a more severe level of foraminal
8 stenosis.

9 With regard to the ALJ's assessment that Plaintiff's credibility
10 is to be depreciated because of her appearance and demeanor at the
11 hearing, while this does not, in and of itself, amount to "sit and
12 squirm" adjudication, nevertheless, in view of the absence of any
13 other valid, articulated factors to depreciate credibility, the ALJ's
14 observations cannot stand on their own as a reason to depreciate
15 credibility. Further, the ALJ's speculation that because Plaintiff had
16 never worked, her limited range of daily activities is more of a "life
17 style choice and not due to any established impairment" is
18 unsupportable and speculative.

19 Plaintiff's credibility will be determined de novo on remand.
20

21 III

22 THE ALJ'S DETERMINATION THAT PLAINTIFF IS LITERATE

23 IN ENGLISH IS NOT SUPPORTED BY SUBSTANTIAL EVIDENCE

24 The ALJ determined that Plaintiff has a marginal education but is
25 able to communicate in English. (AR 35, Finding No. 7.) The Court
26 cannot find that there is substantial evidence to support this
27 conclusion. Plaintiff required the assistance of an interpreter at the
28 administrative hearing, and testified to her inability to communicate

1 in English. (AR 42, 44, 48.) Further, there are intake forms from the
2 community counseling center which indicate that Plaintiff speaks
3 Spanish and will be assigned staff according to that limitation; the
4 consultative psychiatrist's report indicates that she only spoke
5 Spanish and that there was interpretation provided. (AR 250.) In any
6 event, while the Commissioner focuses on Plaintiff's testimony that
7 she could not read or write in English but could understand English
8 "[a] little - like basic things" (AR 35, 48), this does not translate
9 into a conclusion that Plaintiff "is able to communicate in English."
10 (AR 35.)

11 For the foregoing reasons, this matter will be remanded for a new
12 and further hearing consistent with the instructions and
13 determinations provided by the Court in this Memorandum Opinion.

14 **IT IS SO ORDERED.**

15
16 DATED: October 7, 2014

17 /s/
VICTOR B. KENTON
UNITED STATES MAGISTRATE JUDGE